

WISCONSIN SUPREME COURT

TABLE OF PENDING CASES

Clerk of Supreme Court
Telephone: (608) 266-1880
Facsimile: (608) 267-0640
Web Site: www.wicourts.gov
Wisconsin Supreme Court Case Access: <http://wscca.wicourts.gov>

The following table describes pending cases the Supreme Court has accepted on petition for review, bypass, certification and original jurisdiction.

The cases included for the first time (that is, the most recently accepted cases) are marked with an * next to the case number. After the Supreme Court decides a case, the date of oral argument or date of submission on briefs is replaced with the date of the Supreme Court decision and abbreviated mandate. That mandate will generally be listed in the table for two months and then the case will be removed from the table.

The information in the table, from left to right, is as follows:

- the case number;
- an abbreviated caption of the case (case name);
- a statement of the issue(s);
- the date the Supreme Court accepted the case;
- the method by which the case came to the Supreme Court: REVW = Petition for review, CERT = Certification, CERQ = Certified Question, BYPA = Petition to bypass, ORIG = Original Action, WRIT = Petition for supervisory writ, REMD = Remanded from the U.S. Supreme Court;
- the date of oral argument or submission on briefs; or the date of the Supreme Court decision and an abbreviated mandate;
- the Court of Appeals district from which the case came, if applicable; the county;
- the date of the Court of Appeals decision, if applicable;
- whether the Court of Appeals decision is published or unpublished, and, if it is published, the citations to the public domain citation and the official reports for the Court of Appeals decision.

The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

The following table covers cases accepted and decisions issued through **June 20, 2014**. Please direct any comments regarding this table to the Clerk of Supreme Court, P.O. Box 1688, Madison, WI 53701-1688, telephone (608)266-1880.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2010AP1639-CR	<u>State v. Erick O. Magett</u> Where a defendant has entered a plea of not guilty by reason of mental disease or defect, may a court summarily refuse to hold a jury trial on the defense if it determines that the defendant will not present sufficient evidence to create a jury question? Would such circumstances result in harmless error upon appellate review?	03/13/2013 REVW Oral Arg 09/11/2013	4 Grant	Unpub.
2010AP3016-CR	<u>State v. Nicolas Subdiaz-Osorio</u> Whether police may track the real-time location of a cell phone user without a warrant. Whether a criminal suspect made an unequivocal and unambiguous request for counsel during interrogation. Whether evidence obtained from cell phone tracking and statements made during interrogation should be suppressed or whether the admission of such evidence and statements constitutes harmless error.	03/13/2013 REVW Oral Arg 10/03/2013 In Sheboygan, Justice On Wheels	2 Kenosha	Unpub.
2011AP1467-CR	<u>State v. Donyil L. Anderson, Sr.</u> As a matter of law, can a new trial in the interest of justice be granted on the ground the real controversy was not fully tried based on a forfeited challenge to a jury instruction where the erroneous instruction was harmless error? Was it error to grant a new trial in the interest of justice without an analysis that this is an exceptional case warranting the extraordinary remedy of discretionary reversal?	01/13/2014 REVW Oral Arg 04/08/2014	4 Rock	Unpub.
2011AP1514	<u>Robert L. Kimble v. Land Concepts, Inc. et al.</u> Whether a \$1,000,000 punitive damages award against a title insurance company violates the Wisconsin Constitution or the common law of Wisconsin.	07/14/2013 REVW Reversed and remanded 04/22/2014 2014 WI 21	3 Door	Unpub.
2011AP1572	<u>Julaine K. Appling, et al. v. James E. Doyle, et al.</u> Whether Wis. Stat. ch. 770, the domestic partnership law, violates Art. XIII, § 13 of the Wisconsin Constitution.	06/12/2013 REVW Oral Arg 10/23/2013	4 Dane	01/30/2013 Pub. 2013 WI App 3 345 Wis. 2d 762 826 N.W.2d 666
2011AP1653	<u>State v. Carlos A. Cummings</u> Whether the sentence imposed was unduly harsh. Whether there was a valid waiver of a suspect's <u>Miranda v. Arizona</u> , 384 U.S. 436 (1966) rights when he asked to be taken to his cell during the interrogation?	12/17/2013 REVW Oral Arg 03/19/2014	4 Portage	Unpub.

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2011AP1673-CRNM	<u>State v. Cassius A. Foster</u> Whether there had been an intelligent, knowing, and voluntary waiver of counsel [in the defendant's Oklahoma cases]. Whether the waiver of rights form [used in the Oklahoma cases to waive the defendant's right to counsel] was valid in demonstrating the defendant's understanding of the disadvantages of self-representation. Whether prior convictions should have been admissible to enhance the defendant's sentence. Whether a blood draw was performed without a warrant and, if so, whether the warrantless blood draw was constitutional under the U.S. Supreme Court's decision in <u>Missouri v. McNeely</u> , 569 U.S. ___, 133 S. Ct. 1552 (2013).	02/19/2014 REVW	4 Monroe	Unpub.
2011AP1803-CR	<u>State v. General Grant Wilson</u> Did the defendant satisfy the opportunity requirement for presenting third-party-perpetrator evidence under <u>State v. Denny</u> , 120 Wis. 2d 614, 357 N.W.2d 12 (Ct. App. 1984)? If the answer to the first question is "yes," was the error in excluding the <u>Denny</u> evidence harmless beyond a reasonable doubt?	02/19/2014 REVW	1 Milwaukee	Unpub.
2011AP1956	<u>James E. Kochanski v. Speedway Superamerica, LLC</u> Did the trial court err in giving Wis JI-Civil 410 (absent witness) instructions to a jury under the circumstances of the case?	02/12/2013 REVW Oral Arg 09/04/2013	1 Milwaukee	Unpub.
2011AP2188	<u>State ex rel. Ardonis Greer v. David H. Schwarz</u> Whether the Department of Corrections, after erroneously issuing a discharge certificate early, can pursue revocation proceedings against an individual for an action committed after he was advised he was discharged from supervision. Whether a circuit court, sitting in certiorari, has the authority to apply equitable estoppel to the question of whether the Department of Corrections and Division of Hearings and Appeals acted according to law in issuing a revocation order.	06/12/2013 REVW Affirmed 04/17/2014 2014 WI 19	2 Racine	11/29/2012 Pub. 2012 WI App 122 344 Wis. 2d 639 825 N.W.2d 497
2011AP2424-CR (consolidated with 2012AP918, State v. Seaton)	<u>State v. Nancy J. Pinno</u> Whether the failure to object at trial to a Sixth Amendment public-trial violation should be analyzed on appeal as a "forfeiture" or a "waiver" of the issue.	02/25/2013 CERT Oral Arg 09/04/2013	2 Fond du Lac	--

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2011AP2482	<u>Wisconsin Auto Title Loans Inc. v. Kenneth M. Jones</u> Is an order denying a motion to compel arbitration immediately appealable as a "final" order under Wis. Stat. § 808.03 or the Federal Arbitration Act? If an order denying a motion to compel arbitration is immediately appealable, is the trial court's order which determined that the arbitration clause at issue is unconscionable, contrary to <u>AT&T Mobility LLC v. Concepcion</u> , ___ U.S. ___, 131 S. Ct. 1740 (2011), and <u>Cottonwood Financial, Ltd. V. Estes</u> , 2012 WI App 12, 339 Wis. 2d 472, 810 N.W.2d 852 (<u>Cottonwood II</u>) cases?	06/12/2013 CERT	1 Milwaukee	--
2011AP2548-CR	<u>State v. Luis M. Rocha-Mayo</u> Whether the state should be allowed to introduce into evidence, during an OWI prosecution, the results of a qualitative breath test (PBT), not approved for evidential use in Wisconsin, because it was administered by an individual who was not in law enforcement. Whether such a PBT result should be accorded a <u>prima facie</u> effect of intoxication. Whether an emergency room doctor should be permitted to give testimony as to an ultimate fact (intoxication) which embraces a legal concept for which a definitional instruction is required.	11/21/2013 REVW Oral Arg 02/04/2014	2 Kenosha	Unpub.
2011AP2597	<u>Associated Bank N.A. v. Jack W. Collier, et al.</u> Is a creditor's right to obtain a common law creditor's/receiver's lien against a judgment debtor's personal property conditioned upon docketing the judgment in the Judgment and Lien Docket under Wis. Stat. § 806.10 (1)? Is a judgment creditor entitled to relief, in the form of a declaration, that its judgment is effectively docketed in the Judgment and Lien Docket when a clerk accepts the docketing fee but fails to record the judgment in the Judgment and Lien Docket?	04/18/2013 REVW Oral Arg 09/11/2013	2 Waukesha	Unpub.
2011AP2774	<u>Attorney's Title Guaranty Fund, Inc. v. Town Bank</u> Whether an enforceable creditors lien attaches to personal property acquired after a Wis. Stats. ch. 816 supplementary proceeding has been held. Whether the fact that the supplemental commissioner's order and proof of service were not filed with the clerk of court rendered the creditor's lien unenforceable.	05/13/2013 REVW Oral Arg 09/11/2013 Additional Oral Arg 02/25/2014	2 Waukesha	01/30/2013 Pub. 2013 WI App 6 345 Wis. 2d 705 827 N.W.2d 116

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2011AP2833-CR	<u>State v. Jacqueline R. Robinson</u> Did a trial court's amended sentence for criminal convictions violate the double jeopardy clause of the state and federal constitutions? (See <u>State v. Burt</u> , 2000 WI App 126, 237 Wis. 2d 610, 614 N.W.2d 42).	02/12/2013 REVW Affirmed 06/10/2014 2014 WI 35	1 Milwaukee	Unpub.
2011AP2868-CR	<u>State v. Clayton W. Williams</u> Whether Wis. Stat. § 346.65(2)(am)6 imposes a mandatory minimum period of confinement for OWI seventh offense and greater. Does the statute prohibit the imposition of probation in such cases?	11/21/2013 REVW Oral Arg 02/05/2014	4 Monroe	06/26/2013 Pub. 2013 WI App 74 350 Wis. 2d 311 833 N.W.2d 846
2011AP2902	<u>Board of Regents – UW System v. Jeffrey S. Decker</u> Whether there is evidence in the record to show that a person engaged in “acts which harass or intimidate another person and which serve no legitimate purpose” to support a petition for injunctive relief under Wis. Stat. § 813.125(4)(a). See <u>Bachowski v. Salamone</u> , 139 Wis. 2d 397, 408, 407, N.W.2d533 (1987).	06/14/2013 REVW Oral Arg 10/15/2013	4 Dane	Unpub.
2011AP2907-CR	<u>State v. Antonio D. Brown</u> Whether an officer had probable cause under the Fourth Amendment to stop a vehicle where the vehicle's tail lamp was sixty-six percent functional and in “good working order” as required under Wis. Stat. § 347.13(1). Whether <u>Arizona v. Gant</u> , 556 U.S. 332 (2009) applies to the fact situation presented in this case and, if so, how?	10/15/2013 REVW Oral Arg 01/15/2014	1 Milwaukee	02/26/2013 Pub. 2013 WI App 17 346 Wis. 2d 98 827 N.W.2d 903
*2011AP2956-CR	<u>State v. Gary Monroe Scull</u> Whether the good faith exception to the exclusionary rule applies where the police obtained a search warrant in good faith – although based, in part, on a prior illegal search with a drug-sniffing dog. See <u>State v. Dearborn</u> , 2010 WI 84, 327 Wis. 2d 252, 786 N.W.2d 97 and <u>Florida v. Jardines</u> , 569 U.S. ___, 133 S. Ct. 1409, 1417 – 18 (March 26, 2013).	05/22/2014 REVW	1 Milwaukee	02/26/2014 Pub. 2014 WI App 17 352 Wis. 2d 733 843 N.W.2d 859
2011AP3007-CR	<u>State v. Derik J. Wantland</u> When a passenger asks “got a warrant for that?” before an officer opens a briefcase found in the hatchback of a car, has the driver's general consent to search the car been limited?	11/21/2013 REVW Oral Arg 02/20/2014	2 Sheboygan	03/27/2013 Pub. 2013 WI App 36 346 Wis. 2d 680 828 N.W. 2d 885

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2012AP46-CR	<u>State v. Jimothy A. Jenkins</u> Was a defendant denied his constitutional rights to counsel when his attorney failed to investigate, subpoena, and call to testify a neutral eyewitness who may have provided exculpatory evidence? May a postconviction court rely on a finding of a lack of credibility to conclude that trial counsel's failure to call a witness to testify at trial did not constitute ineffective assistance of counsel?	12/16/2013 REVW Oral Arg 04/03/2014	1 Milwaukee	Unpub.
2012AP55	<u>State v. Andres Romero-Georgana</u> Whether postconviction counsel provided ineffective assistance by challenging the circuit court's sentencing decision rather than raising a plea withdrawal claim based on the circuit court's failure to orally advise the defendant of the deportation consequences of his no-contest plea, as required by Wis. Stat. § 974.08(1).	12/19/2013 REVW Oral Arg 04/08/2014	3 Brown	Unpub.
2012AP122	<u>Anthony Gagliano & Co., Inc. v. Openfirst, LLC, et al.</u> May a landlord recover from its tenant's subtenant (or more remote subtenants) all future rent that the immediate tenant promised to pay, regardless of the terms of the transfer from tenant to subtenant or the amount of time that the subtenant occupied the premises? Whether a tenant assigned the lease to subsequent occupiers of the premises, enabling the landlord to recover future rent from the tenant's assignees, or whether subsequent occupiers of the premises were subtenants of the first tenant and the landlord cannot recover future rent from the subtenants. Whether the appellate court should have reversed a directed verdict ruling and remanded the action so that a lease extension issue could be determined as a matter of fact by a jury?	09/18/2013 REVW Oral Arg 12/18/2013	1 Milwaukee	02/26/2013 Pub. 2013 WI App 19 346 Wis. 2d 47 828 N.W.2d 268
2012AP150-CR	<u>State v. Jessica A. Nellessen</u> Must a criminal defendant who wants to compel the state to disclose the identity of an informer make a preliminary showing that the informer could give specifically delineated testimony that might create a reasonable doubt about the defendant's guilt by supporting the asserted theory of defense?	10/15/2013 REVW Oral Arg 01/09/2014	4 Wood	04/24/2013 Pub. 2013 WI App 46 347 Wis. 2d 537 830 N.W.2d 266

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2012AP183	<u>Randy L. Betz v. Diamond Jim's Auto Sales</u> Is attorney consent required for settlement of fee-shifting claims? Whether the language of the settlement agreement in this case, which was entered into by the parties without participation of either party's counsel, was a valid, unambiguous, binding contract that released the auto seller of any further obligation in connection with the auto buyer's claims, including responsibility for the auto buyer's attorney's fees. Whether the settlement agreement in this case violates public policy and is therefore unenforceable.	05/10/2013 REVW Oral Arg 01/09/2014	1 Milwaukee	11/29/2012 Pub. 2012 WI App 131 344 Wis. 2d 681 825 N.W.2d 508
2012AP320	<u>Sharon R. Waranka v. Wadena Insurance Company, et al.</u> May the court apply Wis. Stat. § 895.04 to the plaintiff's wrongful death action to define the class of beneficiaries, the limitation on non-economic damages, and to determine who can bring an action for wrongful death, where the accident causing death occurred in another state, which precludes application of Wis. Stat. § 895.03? May Wis. Stat. § 895.04 be applied to a case without also applying Wis. Stat. § 895.03, which creates a cause of action for wrongful death where the death occurred in Wisconsin? Is conflict of law analysis required in a wrongful death action, where a death occurred in another state but where most of the relevant parties and the relatives of the decedent are domiciled in Wisconsin or brought into the lawsuit under Wisconsin's direct action statute?	11/20/2013 REVW Affirmed 06/03/2014 2014 WI 28	2 Ozaukee	05/29/2013 Pub. 2013 WI App 56 348 Wis. 2d 111 832 N.W.2d 133
2012AP336-CR	<u>State v. Bobby L. Tate</u> Whether obtaining a cell phone's location constitutes a "search" within the meaning of the Fourth Amendment. If so, what probable cause standard applies before police can obtain location information? Whether statutory authorization is necessary before a court can permit a cell phone location search, and whether such statutory authorization exists.	06/12/2013 REVW Oral Arg 10/03/2013 (in Sheboygan, Justice On Wheels)	1 Milwaukee	Unpub.
2012AP337-CR	<u>State v. Muhammad Sarfraz</u> Whether the explicit details of alleged prior consensual sexual contact between the alleged victim and the defendant were admissible under Wis. Stat. § 972.11(2)(b), an exception to Wisconsin's Rape Shield Law. If the trial court erroneously exercised its discretion when it excluded the prior sex acts evidence, was the error harmless?	09/17/2013 REVW Oral Arg 12/18/2013	1 Milwaukee	05/29/2013 Pub. 2013 WI App 57 348 Wis. 2d 57 832 N.W. 2d 346

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2012AP378-W	<u>Lorenzo D. Kyles v. William Pollard</u> What is the appropriate procedure to follow when challenging trial counsel's alleged failure to file a notice of intent to pursue postconviction relief?	12/17/2013 REVW Reversed and remanded 06/17/2014 2014 WI 38	1 Milwaukee	--
2012AP393-CR	<u>State v. Cortez Lorenzo Toliver</u> Does the general rule that a defect of subject matter jurisdiction may be raised at any time conflict with the appellate rule that a party is not permitted to raise an argument for the first time on appeal? Where a court does not make a specific probable cause finding required by Wis. Stat. § 970.032, does the court lose subject matter jurisdiction over the criminal proceeding?	12/17/2013 REVW Oral Arg 04/03/2014	2 Racine	Unpub.
2012AP520-CR	<u>State v. Adrean L. Smith</u> Whether, during custodial interrogation, police violated a suspect's right to remain silent by continuing to question him after he stated, "I don't know nothing about this stuff, so I don't want to talk about this."	12/17/2013 REVW Oral Arg 03/19/2014	1 Milwaukee	Unpub.
2012AP523-CR	<u>State v. Alvernest Floyd Kennedy</u> Were field sobriety tests necessary to establish probable cause to arrest the defendant for Operating a Motor Vehicle While Intoxicated? Was the evidence obtained as a result of the warrantless blood draw a violation of the defendant's right to be free from unreasonable searches and seizures under the Fourth and Fourteenth Amendments to the United States Constitution and Article I, § 11 of the Wisconsin Constitution? Whether the blood draw was performed without a warrant and, if so, whether the warrantless blood draw was constitutional under the U.S. Supreme Court's decision in <u>Missouri v. McNeely</u> , 569 U.S. ___, 133 S. Ct. 1552 (2013).	02/19/2014 REVW	1 Milwaukee	Unpub.

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2012AP580	<p><u>Russell Adams v. Northland Equipment Company, Inc.</u></p> <p>May the trial court compel the plaintiff in an action for the recovery of personal injuries brought against the tortfeasor and its insurance company, to accept the settlement to which the plaintiff objects upon the motion of a worker's compensation insurance carrier that has paid worker's compensation benefits to the plaintiff arising out of the same occurrence for which the plaintiff has brought the common law action?</p> <p>Is it a violation of the Wisconsin Constitution, Article I, Section 5, Right to Trial by Jury, or Article I, Section 9, Right to Remedy, to compel a plaintiff in an action for the recovery of personal injuries brought against the tortfeasor and its insurance company, to accept the settlement to which the plaintiff objects upon the motion of a worker's compensation carrier that has paid worker's compensation benefits to the plaintiff arising out of the same occurrence for which the plaintiff has brought the common law action?</p> <p>If a court may compel a plaintiff to accept a settlement offer pursuant to the authority to resolve disputes under Wisconsin Statutes § 102.29, must the court require a hearing compliant with due process, including an opportunity to present witnesses, to cross-examine witnesses and the other elements of a hearing to guarantee due process?</p> <p>Where a worker's compensation carrier is seeking to compel a plaintiff to accept a proposed settlement pursuant to Wisconsin Statutes § 102.29, what is the standard of the burden of proof required: by the clear and convincing evidence, by the preponderance of the evidence and/or by another standard?</p> <p>In resolving a dispute between a plaintiff/injured employee and the worker's compensation carrier where the worker's compensation carrier has brought a motion to compel the plaintiff to accept a settlement under the authority of Wisconsin Statutes § 102.29, such settlement being offered by the tortfeasor and/or its liability insurance carrier, is it error to allow a tortfeasor and/or its liability insurance carrier to participate in the presentation of evidence or argument in support of such motion?</p>	<p>11/20/2013 REVW Oral Arg 02/04/2014</p>	<p>4 Rock</p>	<p>Unpub.</p>

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2012AP584-AC	<u>League of Women Voters of Wisconsin Education Network, Inc. v. Scott Walker, et al.</u> Do the portions of 2011 Wisconsin Act 23 require constitutionally qualified and registered voters to display a specified form of government-issued photo identification at the polling place as a prerequisite to voting constitute an impermissible additional qualification to vote in violation of Wis. Const. Art. III, § 1? Do the portions of 2011 Wisconsin Act 23 require constitutionally qualified and registered voters to display a specified form of government-issued photo identification at the polling place as a prerequisite to voting exceed legislative authority under Wis. Const. Art. III, § 2? Did the petitioners have standing to bring this action challenging the facial constitutionality of the Voter ID provisions?	11/20/2013 REVW Oral Arg 02/25/2014	4 Dane	06/26/2013 Pub. 2013 WI App 77 348 Wis. 2d 714 834 N.W.2d 393
2012AP597	<u>Scott Partenfelder, et al. v. Steve Rohde, et al.</u> Whether the Federal Railroad Safety Act ("FRSA") preempts plaintiffs' state law negligence and safe-place claims, or whether these claims fall within the "specific, individual hazard" exception to FRSA preemption.	09/17/2013 REVW Oral Arg 01/14/2014	1 Milwaukee	04/24/2013 Pub. 2013 WI App 48 347 Wis. 2d 385 830 N.W.2d115
2012AP641	<u>Julie A. Augsburg v. Homestead Mutual Insurance Company</u> As a matter of law, did a tortfeasor harbor the subject dogs pursuant to Wis. Stat. § 174.001(5) and was he an owner of such dogs for purposes of Wis. Stat. § 174.02?	02/19/2014 REVW	2 Winnebago	09/25/2013 Pub. 2013 WI App 106 350 Wis. 2d 486 838 N.W.2d 88
2012AP667	<u>Brian Casey v. Ronald Smith, et al.</u> Whether a non-trucking-use insurance policy provided coverage for an accident that occurred when a semi-truck was driven to a repair shop for alleged nonessential maintenance.	10/15/2013 REVW Affirmed 04/18/2014 2014 WI 20	3 Dunn	02/26/2013 Pub. 2013 WI App 24 346 Wis. 2d 111 827 N.W.2d 917
2012AP829	<u>Ronald E. Belding, Jr. v. Deeanna L. Demoulin</u> May Wis. Stat. § 632.32 (5) € be used to prohibit an insurance provision expressly authorized by another subsection of Wis. Stat. § 632.32 (5)? May a statute, unambiguous on its face, be rewritten by the court based upon a perceived conflict with another statute? Should Wis. Stat. § 632.32 (6) (d) be construed to prohibit the "drive other car" exclusion expressly authorized by Wis. Stat. § 632.32 (5) (j)?	05/13/2013 REVW Oral Arg 10/23/2013	2 Kenosha	02/26/2013 Pub. 2013 WI App 26 346 Wis. 2d 160 828 N.W.2d 890

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2012AP858	<u>Vicki L. Blasing v. Zurich American Ins. Co., et al.</u> Does the omnibus statute, Wis. Stat. § 632.32(3)(a), require that a liability insurer defend and indemnify a tortfeasor where the alleged negligence caused injury to the named insured person?	06/13/2013 REVV Oral Arg 10/15/2013	4 Jefferson	02/26/2013 Pub. 2013 WI App 27 346 Wis. 2d 30 827 N.W.2d 909
2012AP918 (consolidated with 2011AP2424-CR, State v. Pinno)	<u>State v. Travis J. Seaton</u> Whether the failure to object at trial to a Sixth Amendment public-trial violation should be analyzed on appeal as a “forfeiture” or a “waiver” of the issue.	02/25/2013 CERT Oral Arg 09/04/2013	2 Fond du Lac	--
2012AP1047	<u>Asma Masri v. State of Wisconsin Labor and Industry Review</u> Whether <i>de novo</i> review of a statute’s underlying purpose is a necessary judicial function, regardless of the level of deference granted to an administrative agency’s interpretation of a statute. Whether a full-time health care intern with full access to HIPAA (Health Insurance Portability and Accountability Act)-protected patient medical records and an “all-access” badge to medical facilities is protected under the HCWPA (Health Care Worker Protection Act).	11/13/2013 REVV Oral Arg 03/13/2014	1 Milwaukee	05/29/2013 Pub. 2013 WI App 62 348 Wis. 2d 1 832 N.W.2d 139
2012AP1307-CR	<u>State v. Jeremiah J. Purtell</u> Whether it was appellate error in reversing a trial court’s decision based on a sua sponte argument and factual determinations that were not presented to the trial court.	11/20/2013 REVV Oral Arg 02/05/2014	2 Washington	Unpub.
2012AP1582-CR	<u>State v. Andrew J. Matasek</u> Whether the circuit court has the discretion under Wis. Stat. § 973.0315 to withhold its judgment on expungement until after a defendant successfully completes probation.	11/20/2013 REVV Affirmed 05/23/2014 2014 WI 27	2 Ozaukee	05/29/2013 Pub. 2013 WI App 63 348 Wis. 2d 243 831 N.W.2d 450
2012AP1593-CR	<u>State v. Michael R. Tullberg</u> Whether exigent circumstances justified a warrantless blood draw.	02/19/2014 REVV	3 Shawano	Unpub.

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2012AP1644	<u>Rachelle R. Jackson v. Wisconsin County Mut. Insurance Corp.</u> Did a deputy sheriff qualify as an underinsured motorist (UIM) under an insurer's policy, based on her "use" of a vehicle, when she was hit by the insured's vehicle while walking in front of it in a pedestrian crosswalk, and when she was not at the time manipulating, controlling, or in any other way connected to the vehicle at the time she was hit, because she intended to direct other vehicles to allow the insured's vehicle to merge into traffic? If a deputy sheriff was "using" the insured's vehicle, is she entitled to UIM benefits under the insurer's policy based on her use of the UIM vehicle that injured her?	11/26/2013 REVW Reversed 06/10/2014 2014 WI 36	1 Milwaukee	05/29/2013 Pub. 2013 WI App 65 348 Wis. 2d 203 832 N.W.2d 163
2012AP1652	<u>Milwaukee Branch of the NAACP, et al. v. Scott Walker, et al.</u> What is the constitutional validity of Act 23's photo identification requirements under the suffrage provisions in Wis. Const. art. III?	Oral Arg 02/25/2014 BYPA Oral Arg 02/25/2014	4 Dane	--

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2012AP1769-CR	<u>State v. Martin P. O'Brien</u>	12/05/2013 REVW Oral Arg 03/14/2014	2 Walworth	08/30/2013 Pub. 2013 WI App 97 349 Wis. 2d 667 836 N.W.2d 840
(Consolidated with 2012AP1770-CR and 2012AP1863-CR)	<p>Must hearsay admitted at a preliminary hearing under newly enacted Wis. Stats. § 970.038 meet a threshold level of reliability before a court can use it to find probable cause?</p> <p>At a preliminary hearing, can the State satisfy its burden of showing the higher degree of probable cause needed to bind over a felony for trial by relying solely on a hearsay witness who offers the criminal complaint, for which a lesser degree of probable cause is required?</p> <p>Can a court use the recently enacted Wis. Stats § 970.038 to limit defense cross-examination of a hearsay witness to the question of whether that witness heard the hearsay, rather than the plausibility of the out-of-court declarant's account of the underlying offense?</p> <p>Following the recent enactment of Wis. Stats § 970.038, before the defendant can call his own witness at a preliminary hearing, must the defense make an offer of proof that the testimony will be dispositive to defeat probable cause, rather than simply relevant to the plausibility of the charged offense?</p> <p>Did the preliminary hearing court's application of Wis. Stats § 970.038, which admitted hearsay and precluded the defendant from calling the out-of-court declarant to test his ability to see, hear and remember the relevant facts pertaining to his story, violate the defendant's right to due process?</p> <p>Does a defendant's constitutional right to confront his accusers apply at an adversary-type preliminary hearing such as that granted by Wisconsin statutes?</p> <p>Is a defendant's right to the effective assistance of counsel at a preliminary hearing denied when the state's only evidence offered is the criminal complaint and the defendant is not permitted to cross-examine witnesses with personal knowledge?</p> <p>Whether § 970.038 of the Wisconsin Statutes unconstitutionally deprives a defendant of due process of law.</p>			

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2012AP1770-CR (Consolidated with 2012AP1769-CR And 2012AP1863-CR)	<u>State v. Kathleen M. O'Brien</u> Must hearsay admitted at a preliminary hearing under newly enacted Wis. Stats. § 970.038 meet a threshold level of reliability before a court can use it to find probable cause? At a preliminary hearing, can the State satisfy its burden of showing the higher degree of probable cause needed to bind over a felony for trial by relying solely on a hearsay witness who offers the criminal complaint, for which a lesser degree of probable cause is required? Can a court use the recently enacted Wis. Stats § 970.038 to limit defense cross-examination of a hearsay witness to the question of whether that witness heard the hearsay, rather than the plausibility of the out-of-court declarant's account of the underlying offense? Following the recent enactment of Wis. Stats § 970.038, before the defendant can call his own witness at a preliminary hearing, must the defense make an offer of proof that the testimony will be dispositive to defeat probable cause, rather than simply relevant to the plausibility of the charged offense? Did the preliminary hearing court's application of Wis. Stats § 970.038, which admitted hearsay and precluded the defendant from calling the out-of-court declarant to test his ability to see, hear and remember the relevant facts pertaining to his story, violate the defendant's right to due process? Does a defendant's constitutional right to confront his accusers apply at an adversary-type preliminary hearing such as that granted by Wisconsin statutes? Is a defendant's right to the effective assistance of counsel at a preliminary hearing denied when the state's only evidence offered is the criminal complaint and the defendant is not permitted to cross-examine witnesses with personal knowledge? Whether § 970.038 of the Wisconsin Statutes unconstitutionally deprives a defendant of due process of law.	12/05/2013 REVW Oral Arg 03/14/2014	2 Walworth	08/30/2013 Pub. 2013 WI App 97 349 Wis. 2d 667 836 N.W.2d 840
2012AP1812	<u>County of Grant v. Daniel A. Vogt</u> Does an officer who approaches a vehicle without probable cause or reasonable suspicion that a violation of the law has been committed, and then knocks on the window and motions for the driver to roll down his window, unreasonably seize the driver?	10/15/2013 REVW Oral Arg 01/09/2014	4 Grant	Unpub.

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2012AP1818-CR	<u>State v. Ramon G. Gonzalez</u> Whether ordering a defendant to open his mouth and reveal his teeth to the jury violates the Fifth Amendment right against self-incrimination.	02/19/2014 REVV	1 Milwaukee	Unpub.
2012AP1863-CR (Consolidated with 2012AP1769-CR and 2012AP1770-CR)	<u>State v. Charles E. Butts</u> Must hearsay admitted at a preliminary hearing under newly enacted Wis. Stats. § 970.038 meet a threshold level of reliability before a court can use it to find probable cause? At a preliminary hearing, can the State satisfy its burden of showing the higher degree of probable cause needed to bind over a felony for trial by relying solely on a hearsay witness who offers the criminal complaint, for which a lesser degree of probable cause is required? Can a court use the recently enacted Wis. Stats § 970.038 to limit defense cross-examination of a hearsay witness to the question of whether that witness heard the hearsay, rather than the plausibility of the out-of-court declarant's account of the underlying offense? Following the recent enactment of Wis. Stats § 970.038, before the defendant can call his own witness at a preliminary hearing, must the defense make an offer of proof that the testimony will be dispositive to defeat probable cause, rather than simply relevant to the plausibility of the charged offense? Did the preliminary hearing court's application of Wis. Stats § 970.038, which admitted hearsay and precluded the defendant from calling the out-of-court declarant to test his ability to see, hear and remember the relevant facts pertaining to his story, violate the defendant's right to due process? Does a defendant's constitutional right to confront his accusers apply at an adversary-type preliminary hearing such as that granted by Wisconsin statutes? Is a defendant's right to the effective assistance of counsel at a preliminary hearing denied when the state's only evidence offered is the criminal complaint and the defendant is not permitted to cross-examine witnesses with personal knowledge? Whether § 970.038 of the Wisconsin Statutes unconstitutionally deprives a defendant of due process of law.	12/05/2013 REVV Oral Arg 03/14/2014	2 Walworth	08/30/2013 Pub. 2013 WI App 97 349 Wis. 2d 667 836 N.W.2d 840

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2012AP1869	<u>Richard S. Wilcox v. Estate of Ralph Hines</u> May a person establish possession of property "under claim of title", as required under Wisconsin's 20-year adverse possession statute, Wis. Stat. §893.25, by use alone where the possessor expressly disclaims ownership of the property? Is the fact that permission to occupy the property was sought and granted by a person erroneously thought to be the true owner irrelevant to the question of whether the possessor occupies the property under claim of title?	09/17/2013 REVW Oral Arg 12/19/2013	4 Sauk	05/29/2013 Pub. 2013 WI App 68 348 Wis. 2d 124 831 N.W.2d 791
2012AP1967	<u>Data Key Partners v. Permira Advisors LLC, et al.</u> Must a shareholder alleging breach of fiduciary duty against a corporation's directors plead facts that, if true, would satisfy the conditions for director liability required by the Business Judgment Rule and the Director Immunity Statute, Wis. Stat. § 180.0828, in order to state a claim upon which relief can be granted? May being compelled to sell one's shares in a publicly traded corporation as a result of a duly authorized merger constitute legal harm? Can minority shareholders in a corporation state a claim against the majority for breach of fiduciary duty where the majority allegedly facilitated, and thereafter voted its shares in favor of a merger that paid the minority more per share than the majority received?	12/16/2013 REVW Oral Arg 03/18/2014	4 Wood	09/25/2013 Pub. 2013 WI App 107 350 Wis. 2d 347 837 N.W.2d 624
2012AP2044-CR	<u>State v. Myron C. Dillard</u> Can a defendant demonstrate manifest injustice warranting plea withdrawal where (a) the parties later realized that a penalty enhancer dropped as part of the bargain could not apply to the defendant, and (b) the defendant admitted his dissatisfaction with his sentence compelled his motion for plea withdrawal? Does a defendant demonstrate prejudice based on counsel's failure to recognize that a dropped penalty enhancer could not have applied to him?	02/19/2014 REVW	2 Winnebago	09/25/2013 Pub. 2013 WI App 108 350 Wis. 2d 331 838 N.W.2d 112

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2012AP2067	<u>Madison Teachers, Inc. v. Scott Walker</u> Whether the following provisions of 2011 Wis. Act 10 are unconstitutional: The provision prohibiting collective bargaining between municipal employers and the certified representatives for municipal general employee bargaining units on all subjects except base wages. Wis. Stat. § 111.70(4)(mb)1. The provisions limiting negotiated base wage increases to the increase in the Consumer Price Index, unless a higher increase is approved by voter referendum. Wis. Stat. §§ 111.70(4)(mb)2., 66.0506, and 118.245. The provisions prohibiting "fair share" agreements that previously required all represented employees to pay a proportionate share of the costs of collective bargaining and contract administration. Wis. Stat. § 111.70(1)(f) and the third sentence of Wis. Stat. § 111.70(2). The provision prohibiting municipal employers from deducting union dues from the wages of municipal employees. Wis. Stat. § 111.70(3g). The provision requiring annual recertification elections of the representatives of all bargaining units, requiring 51% of the votes of the bargaining unit members (regardless of the number of members who vote), and requiring the commission to assess costs of such elections. Wis. Stat. § 111.70(4)(d)3.	06/14/2013 CERT Contempt order of Circuit Court vacated 11/21/2013 2013 WI 91	4 Dane	--
2012AP2085	<u>Kelli Brandenburg v. Robert Luethi</u> Does <u>Desaire v. Solomon Valley Co-Op</u> , 1995 U.S. Dist. LEXIS 14523 (D. Kan. Sept. 14, 1995) set forth an appropriate standard for evaluating whether a defendant can be liable for his/her independent contractor's alleged negligence? Should the "inherently dangerous" standard for triggering a principal's vicarious liability for an independent contractor's negligence apply to individuals who do not regularly have employees or hire independent contractors?	10/21/2013 REVW Affirmed 06/12/2014 2014 WI 37	3 Trempealeau	Unpub.
2012AP2140-CR	<u>State v. Angelica C. Nelson</u> If a circuit court prohibits a defendant in a criminal case from testifying in her own defense, does Wisconsin case law provide that the defendant is automatically entitled to a new trial?	12/16/2013 REVW Oral Arg 03/18/2014	3 Eau Claire	Unpub.

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2012AP2170	<u>State v. Joseph J. Spaeth</u> Wisconsin Stat. § 980.02(1m) and (2) requires that a commitment petition be filed "before the person is released or discharged" and alleges that a person has been convicted of a sexually violent offense. Does § 980.02 also require that the commitment petition be filed before the person is released or discharged from a sentence that was imposed for the same sexually violent offense that is alleged in the petition as the predicate offense (<u>See State v. Gilbert</u> , 2012 WI 72, ¶51, 342 Wis. 2d 82, 816 N.W.2d 215)?	11/26/2013 CERT Oral Arg 03/13/2014	2 Winnebago	--
2012AP2185-CR	<u>State v. James R. Hunt</u> Whether it was error for the trial court to prevent a witness from testifying that he did not send the defendant illegal materials.	12/17/2013 REVV Oral Arg 03/19/2014	4 Jefferson	Unpub.
2012AP2196	<u>Jim Weissman, et al. v. Tyson Prepared Foods, Inc.</u> Whether pre- and post-shift donning and doffing of generic work clothing is non-compensable time under Wis. Stat. § 103.02 and the Wisconsin Admin. Code § DWD 272.12, because such work clothing is not "integral" and "indispensable" to employees' principal work activities.	12/16/2013 REVV Voluntary dismissal granted 04/03/2014	4 Jefferson	09/25/2013 Pub. 2013 WI App 109 350 Wis. 2d 380 838 N.W.2d 502
2012AP2402	<u>Hailey Marie-Joe Force, et al. v. American Family Mutual Insurance Company, et al.</u> Can the minor children of a man killed in a car accident recover for wrongful death under Wis. Stat. § 895.04 when there is a surviving spouse, but that surviving spouse has been estranged from the decedent for over ten years, thus precluding any recovery by the spouse from which to set aside the children's share? If the statute does not allow the children to recover absent a recovery by the surviving spouse, does the statute violate the Equal Protection Clause of the United States Constitution by impermissibly differentiating between minor dependent children by conditioning their recovery on the viability of the surviving spouse's claim? Is there a rational basis for providing recovery to minor children whose deceased parent's surviving spouse has a viable claim and denying recovery to those whose deceased parent's surviving spouse does not?	10/21/2013 CERT Oral Arg 01/15/2014	2 Waukesha	--

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
*2012AP2466	<u>Suzanne Stoker, et al. v. Milwaukee County, et al.</u> Whether a county may modify one element of its pension benefit formula prospectively, while making no change in the formula used for service previously rendered and credited. Whether <u>Loth v. City of Milwaukee</u> , 2008 WI 129, 315 Wis. 2d 35, 758 N.W.2d 766 and <u>Wisconsin Federation of Nurses and Health Professionals, Local 5001, AFT, AFL-CIO, et al. v. Milwaukee County</u> , 2013 WI APP 134, 351 Wis. 2d 421, 839 N.W.2d. 869 (petition for review granted), prevail over and must be harmonized with <u>Welter v. City of Milwaukee</u> , 214 Wis. 2d 485, 571 N.W.2d 459 (Ct. App. 1997) and <u>Rehrauer v. City of Milwaukee</u> , 2001 WI App 151, 246 Wis. 2d 863, 631 N.W.2d 644. Whether consent by a county employee's union is sufficient consent to a prospective reduction in a retirement benefit, under Laws of 1945, Ch. 138 § 2(a).	05/23/2014 REVW	1 Milwaukee	12/18/2013 Pub. 2013 WI App 144 352 Wis. 2d 125 841 N.W.2d 532
2012AP2490	<u>Wisconsin Federation of Nurses and Health Professionals v. Milwaukee County</u> Was it error to conclude that an ordinance stating the benefit in issue was a "unilateral" contract because the offer (here, payment of Medicare Part B premiums . . .) cannot be accepted without the happening of something down the road that may or may not happen—retirement. (See <u>Loth v. City of Milwaukee</u> , 2008 WI 129, 315 Wis. 2d 35, 758 N.W.2d 766) Did the ordinance providing for payment of Medicare Part B premiums unconditionally guarantee employees that the County would not diminish or impair the employee's right to that particular retiree health insurance benefit before the employee retired and became otherwise eligible to receive it? Did the County breach a contract by amending an ordinance to modify a retiree health insurance benefit which amendment could only apply to the affected employees who had not yet retired and become eligible for that benefit?	02/19/2014 REVW	1 Milwaukee	11/20/2013 Pub. 2013 WI App 134 351 Wis. 2d 421 839 N.W.2d 869
2012AP2499	<u>Eileen W. Legue v. City of Racine</u> Does governmental immunity apply when someone is injured because an officer proceeds against a traffic signal as authorized by Wis. Stat. § 346.03(2)(b), if the officer slowed the vehicle and activated lights and sirens as required by § 346.03(3) but nonetheless arguably violated the duty to operate the vehicle "with due regard under the circumstances" as required by § 346.03(5)?	11/26/2013 CERT Oral Arg 03/14/2014	2 Racine	--

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
2012AP2513-CR	<u>State v. Raphfeal Lyfold Myrick</u> Did the court of appeals amend a statutory rule of evidence (Wis. Stat. § 904.10) making it applicable in a situation that was excluded by the supreme court when the supreme court promulgated the rule?	01/13/2014 REVW Oral Arg 04/09/2014	1 Milwaukee	10/30/2013 Pub. 2013 WI App 123 351 Wis. 2d 32 839 N.W.2d 129
2012AP2521	<u>Frederick W. Preisler v. Kuettel's Septic Service, LLC</u> Does the decision in this case conflict with the court of appeals' decision in <u>Wilson Mut. Ins. Co. v. Falk</u> , Nos. 2013AP691 and 2013AP776, 2014 WI App 10, 2013 WL 6480760, pet. for review granted? Is there a difference between the definition of "pollutant" in <u>Wilson v. Falk</u> and the definition of "pollutant" in this case? Are the reasonable expectations of farmers and septic haulers different concerning the value of manure used as fertilizer? Is applying septic, as an organic fertilizer, to farmland considered to be a normal, everyday activity for farmers and septic haulers? Does septic, which farmers and septic companies use to apply to farmland as fertilizer, unambiguously constitute a "pollutant" as it is defined under a standard pollution exclusion provision in an insurance policy?	04/17/2014 REVW	3 Outagamie	Unpub.
2012AP2557-CR	<u>State v. William F. Bokenyi</u> Did a prosecutor's sentencing argument breach a plea agreement by undermining the agreed-upon sentencing recommendation? Was defense counsel ineffective for failing to object to the alleged breach of the plea agreement? Should the court overrule the court of appeals' decision in <u>State v. Sprang</u> , 2004 WI App 121, 274 Wis. 2d 784, 683 N.W.2d 522?	12/06/2013 REVW Oral Arg 03/18/2014	3 Polk	Unpub.
*2012AP2566	<u>Sohn Manufacturing Inc. v. LIRC</u> May the state inspect private workplaces for violations of the Wisconsin Safe Place Statute (Wis. Stat. § 101.11(1)) or federal Occupational Safety and Health Administration (OSHA) standards and use the results of such inspections to enforce a safety penalty under Wis. Stat. § 102.57? Is the use of federal OSHA regulations to enforce Wis. Stat. § 102.57 permissible under 29 U.S.C. § 653(b)(4)? Does Wis. Stat. § 101.01(15)(a) prohibit state action in these circumstances?	05/23/2014 REVW	2 Sheboygan	09/25/2013 Pub. 2013 WI App 112 350 Wis. 2d 469 838 N.W.2d 131

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
2012AP2784	<u>118th Street Kenosha, LLC v. Wisconsin Department of Transportation</u> When valuing a temporary limited easement (TLE) under Wis. Stat. § 32.09(6g), can an appraiser testify about alleged permanent severance damages for the period of time beyond the term of the TLE? When valuing a TLE, can a landowner introduce evidence on damages caused by other aspects/phases of a project? When exercising a police power, does the State need to compensate an abutting landowner for elimination of a connection to a highway where a landowner did not have a legal right to access that highway at the location of the connection?	03/18/2014 REVW	2 Kenosha	12/18/2013 Pub. 2013 WI App 147 352 Wis. 2d 183 841 N.W. 2d 568
*2013AP127-CR	<u>State v. Raheem Moore</u> Did a law enforcement officer's decision to turn off a recorder violate the mandate of <u>State v. Jerrell C.J.</u> , 2005 WI 105, 283 Wis. 2d 145, 699 N.W.2d 110 and Wis. Stat. § 938.195, thus requiring suppression of a juvenile's unrecorded statement and his subsequent recorded statement?	05/22/2014 REVW	1 Milwaukee	02/26/2014 Pub. 2014 WI App 19 352 Wis. 2d 675 ___ N.W.2d ___
2013AP221	<u>Dow Family, LLC v. PHH Mortgage Corporation</u> Whether the common law doctrine of equitable assignment, the Uniform Commercial Code or both exempt assignments of real estate mortgages from the Statute of Frauds, with the result that a mortgage automatically accompanies a mortgage note upon negotiation or transfer of the latter without any written assignment of mortgage or recording of any document being necessary. Whether the purchaser's good faith in purchasing the property is relevant to the right to foreclose.	12/16/2013 REVW Oral Arg 03/19/2014	3 Barron	09/25/2013 Pub. 2013 WI App 114 350 Wis. 2d 411 838 N.W.2d 119
*2013AP225	<u>State v. Michael Alger</u> Where a Chapter 980 petitioner files a petition for discharge after effective date of amendments to Wis. Stat. § 907.02(1) (2011-12), whether those amendments apply to the proceedings on the petitions or do not because the "action" was "commenced" with filing of the petition for commitment in 2004? Does Wis. Stat. § 907.02(1) violate the petitioner's rights to Equal Protection if it is deemed to be inapplicable to discharge petitions filed after the effective date of the statute?	05/23/2014 REVW	3 Outagamie	12/18/2013 Pub. 2013 WI App 148 352 Wis. 2d 145 841 N.W.2d 329

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/Cty	CA Decision
*2013AP298-CR	<u>State v. Richard H. Harrison</u> Whether a judge, lacking competence due to a timely motion for substitution under Wis. Stat. § 971.20, presiding over a jury trial and entering the judgment of conviction constitutes "structural error" requiring automatic reversal. Or is the error harmless under a harmless error analysis? Whether a defendant's objection to competency of a judge due to a timely motion for substitution under Wis. Stat. § 971.20 was waived when he failed to timely object to the judge's lack of competence.	05/22/2014 REVW	4 Clark	Unpub.
*2013AP544	<u>Bank of New York v. Shirley T. Carson</u> Whether Wis. Stat. § 846.102 requires a plaintiff in a foreclosure action to sell the subject property "without delay" upon the expiration of the redemption period. (cf. <u>Deutsche Bank Nat'l Trust Co. v. Matson</u> , 2013 WI APP 105, 349 Wis. 2d 789, 837 N.W.2d 178 (petition for review denied) Identical language in Wis. Stat. § 846.103 permits, but does not force, a plaintiff to bring the property to sale).	05/23/2014 REVW	1 Milwaukee	12/18/2013 Pub. 2013 WI App 153 352 Wis. 2d 205 841 N.W.2d 573
*2013AP578	<u>State v. Ronald Knipfer</u> Does a Chapter 980 petition for discharge filed after the effective date of the statutory revision adopting the <u>Daubert v. Merrell Dow Pharm., Inc.</u> , 509 U.S. 579 (1993) reliability standard for expert testimony commence a new action subject to the revised standard, or does a discharge petition continue the original 980 proceeding, so that a patient whose original commitment was initiated prior to February 1, 2011, will remain subject to the former evidentiary standard in all future discharge proceedings? If the revised standard governing the admissibility of expert testimony does not apply to a petitioner's present and future discharge proceedings because his original commitment was initiated prior to February 1, 2011, does this statutory revision violate a petitioner's rights to due process and equal protection of the law? Should a reviewing court apply strict scrutiny or a rational basis standard?	05/23/2014 REVW	4 Dane	01/29/2014 Pub. 2014 WI App 9 352 Wis. 2d 563 842 N.W.2d 526
2013AP691 / 2013AP776	<u>Wilson Mutual Insurance Company v. Robert Falk</u> Is manure that contaminates consumable fresh water a "pollutant" under the pollution exclusion in an insurance policy? Does the Farm Chemicals Limited Liability endorsement in the insurance policy issued to the insureds provide coverage for damages from manure that contaminates consumable fresh water?	04/17/2014 REVW	2 Washington	01/29/2014 Pub. 2014 WI App 10 352 Wis. 2d 461 844 N.W.2d 380

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.

APPENDIX

WISCONSIN SUPREME COURT PENDING CASES

Clerk of Supreme Court
(608) 266-1880

Case No.	Caption/Issue(s)	SC Accepted	CA Dist/ Cty	CA Decision
*2013AP843-CR	<u>State v. Danny Robert Alexander</u> Can an appellate court decide a case on the ground of ineffective assistance of counsel when that issue had never been raised or argued by the parties in the circuit court or in their briefs on appeal?	06/12/2014 REVW	1 Milwaukee	Unpub.
*2013AP1108-CR	<u>State v. Jesse J. Delebreau</u> Once trial counsel has been appointed for a criminal defendant, if the defendant requests a custodial interview with law enforcement, is it a violation of that defendant's Sixth Amendment right to counsel for law enforcement to take a statement from the defendant, without the defendant's appointed attorney being present, if the officer provides the usual <u>Miranda v. Arizona</u> , 384 U.S. 436 (1966) warnings before taking the statement? Is it a violation of the defendant's Article I, Section 7 of the Wisconsin Constitution's right to counsel?	05/22/2014 REVW	3 Brown	02/26/2014 Pub. 2014 WI App 21 352 Wis. 2d 647 843 N.W.2d 441
*2013AP1163-CR	<u>State v. Kearney W. Hemp</u> Was a defendant's conviction expunged upon successful completion of his sentence or was the defendant required to petition the circuit court for expungement upon successful completion of probation? May the circuit court modify a sentence, sua sponte, to revoke probation that was previously granted?	06/12/2014 REVW	1 Milwaukee	03/26/2014 Pub. 2014 WI App 34 353 Wis. 2d 146 844 N.W.2d 421
*2013AP1392	<u>Runzheimer International, Ltd. v. David Friedlen, et al.</u> Is consideration in addition to continued employment required to support a covenant not to compete entered into by an existing at-will employee?	06/12/2014 CERT	1 Milwaukee	--
*2013AP1638-FT	<u>Outagamie County v. Michael H.</u> Do thoughts of suicide or self-harm, without an articulated plan for acting on those thoughts, constitute "threats" of suicide or serious bodily harm necessary to establish dangerousness under Wis. Stat. § 51.20 (1) (a) 2.a? Was the evidence sufficient under a second standard specified in Wis. Stat. sec. 51.20 (1) (a) 2. c., which requires evidence of such impaired judgment, manifested by a pattern of recent acts or omissions, that there is a substantial probability of physical impairment or injury?	06/12/2014 REVW	3 Outagamie	Unpub.

NOTE: The statement of the issue is cursory and does not purport to be an all-inclusive, precise statement of the issues in the case. Readers interested in a case should determine the precise nature of the issues from the record and briefs filed with the Supreme Court.